IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5626 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHUBEN DAYASHANKER PANERI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5626 of 2002

MR PJ KANABAR for Petitioner No. 1

MR PD BHATE, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/04/2004

ORAL JUDGEMENT

1. The petitioner has approached this Court to obtain appropriate relief with regard to payment of

the family pension to her together with all incidental benefits. It appears that the same has been denied to her on the ground that her deceased husband had not rendered adequate service so as to make him eligible to receive pension.

2.0. The petitioner's husband was employed on 1st April, 1960 as an Accountant in the Sarvoday scheme administered by the State of Gujarat. He was initially appointed at Amreli and he served there under the said scheme between the period 1st April, 1960 to 31st August, 1981. During the service in Amreli District he served at various places such as Babapur, Chamardi, Mota Ankadia, etc.

2.1. Upon dissolution of the said scheme, the Government directed respective District Panchayats to employ such employees even in ex-cadre post. The deceased husband of the petitioner was accordingly appointed in Amreli District as ex-cadre Junior Clerk. His order of appointment was issued by the District Development Officer, Amreli District Panchayat and as a result of that he was appointed in the Revenue Department of the Panchayat. He served there from 1st September, 1981 to 15th January, 1988. Vide order dated 11th January, 1988 of the District Development Officer, Amreli, the deceased husband of the petitioner was appointed in the office of the Executive Engineer (R & B) with effect from 16th January, 1988 to 31st January, 1997. On account of superannuation he was retired from service with effect from 31st January, 1997 as per order dated 29th January, 1997 of the District Development Officer.

2.2. Upon retirement the question regarding payment of retiral benefits including the pension arose. The District Development Officer in fact passed order sanctioning the pension by order dated 13th June, 1997. However, it appears that the Government declined to grant pension and other retiral benefits to the deceased husband of the petitioner because his service rendered in the Panchayat alone was kept in view for deciding the period of pensionable service. As such he was falling short by two months since he had rendered service in the Panchayat of 9 years and 10 months. The requisite period is 10 years. Thus, while computing the length of service for the purpose of payment of pension, etc. and other retiral benefits, the long service rendered under the scheme was completely ignored. The deceased kept on making representations to the higher authorities requesting them to take into consideration the service

rendered by him under the scheme and to make him eligible for grant of all the retiral benefits including the pension. However, the representations were not favoured by the respondent. The petitioner's husband unfortunately expired on 25th September, 1997. It is the petitioner who thereafter pursued the matter for obtaining the family pension and since she failed in her attempt, ultimately she was constrained to file petition before this Court seeking the relief for grant of pension and other retiral benefits which are available to Panchayat employees together with interest.

3. Mr. P.J. Kanabar, learned advocate appearing for the petitioner has submitted that the respondent has wrongly denied the pension to the deceased husband of the petitioner keeping in view the resolution dated 15th December, 1987. According to Mr. Kanabar, this question, namely the payment of retiral benefits to an ex-employee of the Sarvoday scheme who was later on required to render service in the Panchayat came up for consideration on several occasions in this Court and this Court has taken a consistent view that the concerned employee's service rendered in the Sarvoday scheme has to be taken into account for determining the payment of retiral benefits. He has placed reliance on the decision rendered by this Court in Special Civil Application No. 1696 of 1996 and its cognate matters rendered by the learned Single Judge [Coram : C.K. Buch, J.] dated 16th October, 2001 whereby the learned Judge has turned down case of the respondents of that case, which was totally based on the resolution dated 15th December, 1987. In the said resolution it has been prescribed that for such purpose the date of absorption in the Panchayat service i.e. from 1st April, 1987 has to be taken into consideration. However, the said resolution when challenged before this Court, the learned Single Judge has observed as under :-

> "..... On one hand the State has introduced many welfare scheme including pension schemes for various class and categories of persons and on the other surprising discrimination has been carried out. The policy decision normally could not have been interfered by this Court by exercising jurisdiction under Article 226. But when the policy qua to different cadres serving with original Sarvodaya scheme is found to be discriminating or unhealthy, this Could shall have put the things in order. While dealing with the above referred Special Civil Application this Court had directed at the relevant point of time

> the respondents to reconsider the case of the petitioner, in light of the Government Resolutions and other circulars. The apprehension expressed by the learned counsel for the petitioner is that if the present petitioners are directed to approach to the State again for making representation, then this senior citizens aged about more than 65 years would not get advantage of the policy of the State reflected in the various resolutions issued granting pensionary and other benefits to such employee. Undisputedly the present petitioners have served for several years in the panchayat service, the State should not have hesitation in considering their earlier service rendered to the State during 1981 to 1987 or even prior to that day i.e. the day on which they were recruited by the Sarvodaya Yojna. As per the prevailing policy of earlier years it is rightly submitted that when Sarvodaya Scheme was envisaged, the State policy was in conformity at that relevant point of time and therefore this petition should be allowed. The Government Resolution dated 15/12/1987 Annexure-J and other orders rejecting the request to grant pensionary benefit are hereby quashed and set aside qua all the three present petitioners and shall not have binding effect on the present petitioners."

4. In view of the aforesaid decision, this issue now stands concluded. It is, therefore, very clear that the deceased was entitled to have pension and now his widow i.e. the petitioner the family pension. It may be noted here that the respondent has denied that by virtue of the resolution dated 15th December, 1987 and the family pension cannot be paid to the petitioner. No other reason has been advanced for the same. When the entire basis of the objection of the respondent for payment of retiral benefits to the deceased husband of the petitioner and thereafter to the petitioner has gone i.e. the resolution dated 15th December, 1987 and its stand with regard to the petitioner not being eligible for receiving family pension will also not survive. There is also no case of the respondent that she is not covered under Family Pension Scheme.

5. It may be noted here that the petitioner being the widow of deceased employee has been deprived of the benefit of family pension since the date of death of her husband i.e. 25th September, 1997. Since that day she has been clamoring for payment of family pension to

her, which could have been the only source of maintenance for her. It is rather unfortunate even that meagre amount was denied to her by the respondent. It is also required to be noted that several decisions of this Court have been delivered quite some time back, the one which has been referred to above is delivered on 16th October, 2001. Inspite of that, till this date the petitioner has not been granted this benefit when this Court has categorically laid down that the previous service of the employee under Sarvoday Scheme is required to be counted for the purpose of deciding the entitlement for pensionary benefits. In view thereof, it is very obvious that the petitioner has been deliberately not granted the family pension. Respondent is, therefore, required to be directed to pay to her the family pension with effect from 25th September, 1997 i.e. the date on which her husband expired. Further in view of the aforesaid, this is a fit case where interest ought to be awarded on the unpaid amount. By the decision rendered in the case of Gorakhpur University v/s. Dr. Shitla Prasad Nagendra reported in (2001) 6 S.C.C. page 591 the Apex Court has confirmed the direction given by the High Court to pay to the concerned employee pension and provident fund with interest at the rate of 18% p.a. In view of the same, the respondent is also required to be directed to pay interest. However, considering the decrease in the rate of interest, the respondent is directed to pay interest on the amount of arrears at the rate of 10% p.a.

5.1. In view of the aforesaid, the respondent is required to be given following directions :-

I. The respondent shall pay to the petitioner the family pension with effect from 25th September, 1997,

II. The respondent shall work out and pay the amount of family pension payable to the petitioner at the earliest and in any case not later than 31st August, 2004,

III. The respondent will pay simple interest at the rate of 10% p.a. on the amount of arrears with effect from 25th September, 1997 till the date of payment.

6. In view of the above, this petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.